

August 10, 2000

D.T.E. 98-AD-9

Adjudicatory hearing in the matter of the complaint of Christel Richard, Petitioner,
protesting charges for telephone service provided by Verizon Massachusetts.

APPEARANCES: Christel and René Richard

P.O. Box 1168

Boston, Massachusetts 02117

PRO SE

Complainant

Barbara Anne Sousa, Esq.

Verizon Massachusetts

185 Franklin Street, Room 1403

Boston, Massachusetts 02110

Respondent

I. INTRODUCTION

On July 16, 1996, an informal hearing was held before the Consumer Division ("Division") of the Department of Public Utilities, now known as the Department of Telecommunications and Energy ("Department") on the complaint of Christel Richard relative to rates and charges for telephone service provided by Verizon New England, Inc. d/b/a Verizon Massachusetts ("Company"). Mr. René Richard, husband of Christel Richard (collectively, "Complainant"), appeared before the Department for himself and on his wife's behalf. The Complainant was dissatisfied with the informal hearing decision rendered on May 21, 1998, and requested, on June 5, 1998, an adjudicatory hearing before the Department pursuant to 220 C.M.R. § 25.02(4)(c). The matter was docketed as D.T.E.

98-AD-9.

On October 15, 1998, pursuant to notice duly issued, an adjudicatory hearing was conducted at the Department's offices in Boston, in conformance with the Department's Regulations on Billing and Termination Procedures, 220 C.M.R. §§ 25.00 et. seq. ⁽¹⁾ The Complainant testified on his own behalf. The Company sponsored the testimony of

John L. Conroy, regulatory director, and Rosemary Freeman, regulatory specialist. After approximately two hours of testimony, the hearing was suspended at the request of the parties to allow them to conduct settlement negotiations. After settlement efforts failed, a second evidentiary hearing was held on February 1, 1999. The evidentiary record consists of 55 exhibits and three record requests.

II. SUMMARY OF ISSUES

The Complainant refuses to pay the outstanding \$300 owed on his account which reflects the amount withheld by the Complainant for calls placed by the Complainant from a pay telephone, on or about December 1, 1994, to Germany (Exh. CR-3, at 2). The Complainant states that the Company forced the Complainant to incur these charges because the Complainant's telephone service was interrupted from December 2, 1994 to December 8, 1994 and the Complainant could not use his own telephone (Tr. 3, at 122-123). The Complainant also seeks compensation for negligence beyond that which is provided by the Company's tariffs (Tr. 3, at 126).

The Company contends that the Complainant is responsible for payment of the \$300 bill, which represents the past due balance of the account as of January 17, 1999 (Tr. 3, at 113; DTE-RR-2). The Company agrees that the Complainant's telephone line was out of service from December 2, 1994 to December 8, 1994 due to a cable failure not caused by the Complainant (Tr. 3, at 130; Richard-RR-1). The Company acknowledges that it was required by tariff (D.P.U. - Mass.

No. 10, Part A, Section 1.2.1(G), (H), and (I), and Section 1.2.5(A) and (B)) ("Company Tariff") to provide an adjustment for the out-of-service period (DTE-RR-1), and, as a show of good faith, the Company credited the Complainant's account with an adjustment of \$42.15 on December 17, 1994, which represented the equivalent of one month's telephone service (Tr. 3, at 113).

III. SUMMARY OF FACTS

- The Complainant

The Complainant stated that he suffered a loss of service on his telephone line in December 1994 and, consequently, was forced to incur \$300 in telephone charges because his wife had to use a pay telephone, rather than their residential telephone, to contact her relatives in Germany (Tr. 3, at 122-123; Richard-RR-1). The Complainant stated that his wife became panicked over not being able to contact her relatives and was traumatized (Tr. 3, at 123). The Complainant stated that he estimated the amount spent on the Germany calls using coins at the pay telephone to be \$300 (Tr. 3, at 124). The Complainant also expressed a general dissatisfaction with the resolution process (see, e.g., Exhs. CR-17, CR-25, CR-30; Tr. 2, at 14).

- The Company

The Company acknowledged that it received a repair report due to a cable failure on December 2, 1994 at 7:02 p.m. which was cleared on December 8, 1994 at 1:00 p.m. (Richard-RR-1; Exh. CR-3). The Company asserted that on December 17, 1994, it adjusted the Complainant's bill with a credit of \$42.15, which represented the value of one month's service to the Complainant (Tr. 3, at 113). The Company also stated that, normally, the credit given would have been for the actual time of loss of service, one week, as required by the Company Tariff (DTE-RR-1; Tr. 3, at 113). However, the Company gave the Complainant a credit for a whole month's service as a show of good faith (Tr. 3, at 126).

The Company's asserted that, over the course of this complaint, the amount overdue has fluctuated (e.g., the amount withheld was \$300.00 as of September 17, 1995, \$234.31 as of October 15, 1995, and \$300.00 as of January 17, 1999) but, at the time of the evidentiary hearing, remained at \$300.00 (DTE-RR-2, Richard-RR-1; Tr. 3, at 113).

IV. STANDARD OF REVIEW

The Department's well-established policy requires that the Company produce such substantial evidence as will permit a

presumption concerning the accuracy of the Company's questioned billings. Tucak v. New England Telephone and Telegraph Company, D.P.U. 90-AD-5 (1994); Desantis v. New England Telephone and Telegraph Co., D.P.U. 19889 (1981). In order to rebut this presumption, the customer is required to produce substantial evidence of such weight and quality as would place the propriety of the Company's billing in question. New England Telephone and Telegraph Company v. Quayyum, D.P.U. 604 (1981); Buonopane v. New England Telephone and Telegraph Company, D.P.U. 30 (1981).

- ANALYSIS AND FINDINGS

Our standard of review requires a two-step analysis. First, we must determine whether the Company has presented evidence sufficient to support a conclusion that the amount owed is accurate. Second, we must determine whether the Complainant has presented enough evidence to rebut the Company's showing. For the reasons discussed below, we determine that the Company has made the requisite showing, and that the Complainant has failed to rebut that showing.

As part of the analysis, we look to see whether the Complainant is entitled to receive an abatement of the \$300 he has withheld from payment to the Company. In order to reach a conclusion, we consider the following: (1) whether there was an out-of-service period for the Complainant; (2) whether the loss of service was caused by the Complainant; and (3) if the Complainant was not at fault for loss of service, whether the Company has complied with its tariff provisions on credits for failure of service.

The Company acknowledged that the Complainant's line was out of service for one week, December 2 - 8, 1994, and that the Complainant was not at fault for this loss of service. The Company Tariff requires the Company to credit its customer for the out-of-service period, which was approximately one week. The Company credited the Complainant's account for the whole month's service (December 1994), not just one week. In essence, the Company gave the Complainant a greater credit than the Complainant was entitled to under the tariff. Thus the Company has more than met its obligations under the tariff for a loss of service complaint filed by the Complainant. The Department finds that the Company owes no further duty or additional compensation to the Complainant under the tariff which is within the Department's jurisdiction to award. The Complainant presented no evidence to refute this finding. Therefore, we find that the Company has properly compensated the Complainant for the lost service.

The Company demonstrated that, over the course of this complaint, the amount overdue has fluctuated (e.g., the

amount withheld was \$300.00 as of September 17, 1995, \$234.31 as of October 15, 1995, and \$300.00 as of January 17, 1999 (DTE-RR-2, Richard-RR-1). The Complainant, at the time of the February 1, 1999 evidentiary hearing, asserted that the amount withheld was \$300 (Tr. 3, at 124). The Company demonstrated, and the Complainant did not refute, that he intentionally withheld up to and including \$300, pending resolution of this complaint. Based on the above, the Department finds that an abatement is not warranted, and that the remaining amount owed on the account up to and including \$300 is due and payable. The Department further finds that the Company has produced evidence sufficient to establish the accuracy of its billing of the Complainant, and that the Complainant has not rebutted the Company's evidence.

The Complainant presented testimony regarding trauma Christel Richard experienced due to her inability to reach her relatives in Germany due to the failure of service, and also presented testimony regarding the Complainant's interest in pursuing a claim for compensation based on negligence against the Company. These claims are beyond the jurisdiction of the Department to consider. "The Department does not have the jurisdiction to award damages in consumer disputes." Margosian v. Boston Edison Company, D.P.U. 92-AD-30, at 15 (1994); see Silva v. Massachusetts Electric Company, D.P.U. 89-AD-6 (1992); Alford v. Commonwealth Gas Company, D.P.U. 410 (1981); see also Metropolitan District Commission v. Department of Public Utilities, 352 Mass. 18, 26 (1967). Accordingly, we dismiss any such claim for lack of jurisdiction.

VI. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the unpaid sum of \$300 accrued by the Complainant and owed to the Company is due and payable. The Complainant may pay the outstanding balance of \$300 in a lump sum within thirty (30) days from the date of this order or at a rate of \$100 per month for three months, with the first payment due thirty (30) days from the date of this order and the final payment due ninety (90) days from the date of this order.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. An adjudicatory hearing was originally scheduled for September 30, 1998, and continued at the Complainant's request to October 15, 1998 so that the Complainant could gather evidence for the adjudicatory hearing (Tr. 1, at 3).